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No. 91-1741

In The

Supreme Court of the United States

October Term, 1991

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

Petitioners,

v.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

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DESIGNATION OF CORPORATE RELATIONSHIPS

Southern California Rapid Transit District, filing this brief in opposition to Petition for Writ of *Certiorari* to the Ninth Circuit Court of Appeals as a Respondent in this proceeding, states that:

This is its original Designation of Corporate Relationships.

Southern California Rapid Transit District is an independent governmental agency; it is not owned by any other agency or corporation.

Southern California Rapid Transit District does not have an ownership interest in any subsidiaries.

Southern California Rapid Transit District does not have any affiliate or concurrently governed associated bodies.

Dated: June 3, 1992

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BRIEF IN OPPOSITION

INTRODUCTION

This case is uniquely inappropriate for review by this Court. While not *sui generis*, it presents an issue on which this Court has more than once spoken unequivocally. Although the case has importance to a financial contribution to mass transit in Southern California, it has never presented any novel or complex legal issues for the courts.[1]

[1] Petitioners' simplistic and misleading arithmetic which produces a "five-five" division out of a five-to-two majority opinion of the California Supreme Court cannot change this fact.

Petitioners tested their arguments on many grounds at the outset of the litigation. Indeed, they started with the principle that the benefit assessment district must fail because there was no finding of benefit to property owners from construction of the subway. Four and a-half years later, that argument and all their other arguments, based on both California law and the United States Constitution, have been rejected or abandoned; petitioners approach this Court on the lone ground that there was a potentially improper allocation of votes for an election that never took place and indeed was never sought by petitioners.

None of the considerations set forth in Rule 10, which governs review on certiorari, is implicated here. This case does not present an issue of general public importance. It rests squarely and exclusively on unique provisions of the California Public Utilities Code. Nor has the opinion of the California Supreme Court created a lack of uniformity of decision among courts on any issue of federal law. It is firmly based on the decisions of this Court. Thus, the single most important reason often noted by this Court for granting a petition for certiorari – that the issue sought to be reviewed involves a conflict of decisions among the lower federal courts on a point of federal law – is lacking here. This Court has not been inclined to grant certiorari even to resolve conflicts under such circumstances, where, as here, the issue presented is unlikely to recur outside the narrow context of rapid transit in Southern California.

STATEMENT OF THE CASE

This case was never about public transportation in Los Angeles, although petitioners' opening salvo would suggest otherwise. It was never a referendum on whether a subway in Los Angeles was a wise or necessary public improvement. As the California Supreme Court noted:

> "The question at issue is not whether the Metro Rail should be built and, if so, how its costs should be distributed. Neither are we asked to consider directly the desirability or usefulness of special assessment districts as a financing device to recapture some of the economic value added to a commercial area as a result of locating a rapid transit station within it. Questions concerning metropolitan transportation policy in greater Los Angeles, and the economic, environmental and aesthetic aspects of Metro Rail and of benefit assessment districts, important as they undoubtedly are as public issues, are not presented by this case, having been resolved sometimes litigated (see, e.g., Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District (1986) 185 Cal.App.3d 179), and resolved in other forums over the decade." Southern California Rapid Transit District v. Bolen, 1 Cal.4th 654, 3 Cal.Rptr.2d 843 (1992); Petitioners' Appendix at 10-11.

Petitioners have tried at each step of this litigation to convince various courts that the aforementioned non-issues were at the heart of this case. In fact, they are not. The issue in the case is whether the principle of one person, one vote laid down by this Court in Reynolds v. Sims, 377 U.S. 533 (1964) applies to the property-based assessment district voting scheme set forth in California

Public Utilities Code §§ 31000-31720 or whether the circumstances here fall within the trio of post Reynolds decisions of this Court which recognize exceptions to that principle Salyer Land Co. v Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) ("Salyer"); Associated Enterprises, Inc. v Toltec Watershed Improvement District, 410 U.S. 743 (1973); Ball v James, 451 U.S. 355 (1981). A subsidiary issue before the California Supreme Court, moved to center stage in this petition, was whether the vote allocation scheme is reasonable under all the circumstances. This case is thus about the applicability of three of this Court's holdings which are squarely on point, not about gridlock in Los Angeles.

Two final points provide background for consideration of this petition. First, California law provides for the formation of benefit assessment districts without any vote at all. Thus, in enacting Public Utilities Code §§ 31000, et seq., the Legislature could have provided for creation of the benefit assessment districts without resort to any petition or election. Second, under the statutory scheme at issue, an election would have been required if owners of only 25% of the assessed value of real property within the proposed assessment district had petitioned for an election. No such petition was ever presented to the Southern California Rapid Transit District. Petitioners never attempted to organize and submit such a petition. There was therefore no protest mounted to the establishment of the assessment district and the election provided for in the Public Utilities Code, the details of which are challenged here, was never held. Whatever the law may require on vote allocation, there was no deprivation of voting rights here; the entire issue

is merely a vehicle for an opportunistic attack on an important public measure.

ARGUMENT

A. None Of The Considerations Governing Review On Writ of Certiorari Is Presented By This Case.

Rule 10 of the Rules of this Court sets out the "character of reasons" which must be present for this Court to grant a petition for a writ of certiorari. Petitioners nowhere discuss this standard, nor make even passing reference to the Rule. This is because the matter which petitioners set before this Court does not present any of those "special and important reasons" which justify grant of the petition.

The opinion of the California Supreme Court has not decided a federal question in a way that conflicts with another state court of last resort, or of United States Court of Appeals. It has not decided an important question of federal law which has not been, but should be, settled by this Court, or a federal question in a way that conflicts with applicable decisions of this Court. On the contrary, the California Supreme Court opinion challenged here rests squarely on three decisions of this Court in similar cases.

Petitioners have pointed to no conflict between the California Supreme Court decision at issue and the decision of any other federal court at any level. Petitioners struggle to distinguish the case from this Court's controlling precedents and, failing, fall back on the arguably

irrelevant fact that this Court has recently heard, but not decided, a case dealing with the constitutionality of California's Proposition 13. That coincidence cannot provide a substitute "special and important reason" for the grant of the petition here.

Certiorari has traditionally been granted to reach problems "beyond the academic or the episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). This case could be said to partake of both those characteristics. Academic surely, concerning, as it does, an election that was never sought and never took place; episodic also, in that it arises under a unique statute inapplicable to anything but rapid transit in Southern California.

B. The California Supreme Court Properly Held The Vote Allocation Scheme To Be Rational Under Ail The Circumstances.

As petitioners concede, the law does not require a perfect fit between the vote allocation scheme and the burden of the special assessments; it requires only that the relationship not be irrational in view of all the circumstances. As the California Supreme Court noted, the relationship between the allocation of votes and the burden of the assessment in this case is very similar to that employed in *Salyer;* it is hardly irrational.

In *Salyer*, votes were apportioned based on the appraised value of land, exclusive of improvements, minerals and mineral rights. 410 U.S. at 725 n.6. [California Water Code § 41001.] In contrast, the assessments levied upon each property by the water storage district were to be determined by the commissioners of the district "in

accordance with the benefits that will accrue to each tract of land . . . by reason of the expenditures of the money and the completion of the project, or such units of it as have been specified for immediate construction." 410 U.S. at 724. [California Water Code § 46176.] Thus, depending upon the particular improvement being constructed, the commissioners might assess some property and not others. Similarly, they might determine that the most equitable method of apportionment of the assessment was based on the assessed value of both land and improvements; or they might reasonably decide that the assessment should be based on acreage or square footage of land only; or on square footage of both land and improvements. No precise relationship between vote allocation and the allocation of financial burden necessarily existed in the statutory scheme involved in *Salyer*, yet the Court did not hesitate to pronounce the scheme constitutional under the rational relationship test. 410 U.S. at 734.

In *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259 (1977) ("*Lockport*"), the Court upheld the constitutionality of a statute requiring a dual majority of both city voters and voters outside the city to approve adoption of a new county charter. In approving the plan, the Court reasoned as follows:

> "[I]t appears that the challenged provisions of New York law rest on the State's identification of the distinctive interests of the residents of the cities and towns within a county rather than their interests as residents of the county as a homogeneous unity. This identification is based in the realities of the distribution of governmental powers in New York, and is consistent

> with our cases that recognize both the wide discretion the States have in forming and allocating governmental tasks to local subdivisions, and the discrete interests that such local governmental units may have *qua* units." 420 U.S. at 268-69 (citations omitted).

Plainly, the dual majority scheme in *Lockport* did not allocate votes proportionally among suburban and urban voters. Thus, the Court approved a plan in which there was no proportional relationship whatever between the allocation of voting strength and the prospective burdens to be imposed on the voters. The California Supreme Court's conclusion that vote allocation based on assessed value is rational irrespective of any mathematical proportionality is thus consistent with this Court's practical approach to the issue. Petitioners' admission that they will pass on, and thus avoid altogether in some cases, the burden of the assessment gives their fundamental fairness argument a hollow ring. Where the "burden" is illusory; "proportionality" is not ascertainable.

The California Supreme Court's deference to issues of feasibility, practicality and administrative convenience also is consistent with established precedent. Federal courts, including this Court, repeatedly have acknowledged that administrative convenience is a legitimate factor in determining a vote allocation scheme. In *Salyer*, the Court justified the exclusion of lessees in part because of the administrative difficulties involved in determining their identity. 410 U.S. at 732-33. Specifically, the Court

noted that property owners could be identified from the assessment rolls, whereas lessees could not.[2] *Id.*

In *Tron v. Condello*, 427 F. Supp. 1175, 1192 (S.D.N.Y. 1976), the court upheld the exclusion of retired pensioners from voting in an election for members of a Retirement Board administering a pension fund, in part on the ground that including retirees would create difficulties in administering the nomination and election provisions. If the vote may be *denied* on administrative grounds when the one-person, one-vote rule does not apply, *a fortiori*, it may be diminished.

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[2] In *Salyer*, the same argument that petitioners make here, in favor of extending the franchise to tenants, also was made. Tenants, it was argued, had interests indistinguishable from those of landowners because the assessments might be passed on to them either by express agreement or increased rentals. 410 U.S. at 732. The Court, however, found many rational bases to justify exclusion of tenants, including the potential for abuse and administrative convenience. 410 U.S at 732. The Court concluded that "the exclusion of lessees from voting in general elections for the directors of the district does not violate the equal protection clause." 410 U.S. at 733. Petitioners' reliance on the presence of pass-through provisions in commercial leases hardly distinguishes away, or even diminishes, the strong precedential impact of *Salyer*. Pass-through provisions are at most an efficient mechanism for transferring a landlord's cost of doing business to tenants. In *Salyer*, the Court acknowledged the possibility that assessments would be passed on to tenants and even acknowledged that this end might be accomplished by express agreement. It nevertheless held the exclusion of tenants from voting to be constitutional. Similarly, the California Supreme Court recognized that the pass-through clauses are simply one step in a larger process by which "the financial consequences of the assessments are presumably distributed through the region." Petitioners' Appendix at 28.

In *U.S. Steel Corp. v. Public Utilities Comm'n*, 29 Cal. 3d 603, 614 (1981), the California Supreme Court held that administrative convenience may be given weight and "equal protection is not denied" merely because "classifications made are imperfect," or "not made with mathematical nicety or because in practice it results in some inequality." This case thus presents no departure from established precedent.[3]

In view of these precedents, the vote allocation scheme at issue here is not irrational. It was reasonable for the California legislature to use the best allocation of votes that was available and administratively feasible at the time it passed the special assessment statute. The statute provides for allocation of votes in accordance with the assessed value of the real property. At the time of its passage, this offered the only feasible method for allocating votes because the tax rolls were readily available, and it would take many months after the districts were created to determine, on a building by building basis, the square footage upon which the assessments would be

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[3] The California Supreme Court properly acknowledged that the SCRTD's subsequent proposal to amend the statute to change the manner in which the votes were allocated, had no relation to the intent of the Legislature at the time of the statute's passage. The California Supreme Court had to determine whether the statute as passed, and only that statute, meets constitutional requirements. Subsequent efforts of the SCRTD, or any other body, to amend the legislation, and the reasons or speculation about why such changes were or were not adopted, had no bearing on the court's inquiry.

based. As the California Supreme Court noted: "It was hardly unreasonable. . . . " Petitioners' Appendix at 37.

CONCLUSION

This case involves a unique state statute created for a local transportation district. It meets none of the criteria set out in Rule 10 and thus the petition should be denied.

Dated: June 3, 1992

Respectfully submitted,

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